

## **REMARKS**

Applicant is in receipt of the Office Action mailed April 5, 2006. Claims 1-108 have been cancelled. New claims 109-208 have been added. Therefore, claims 109-208 remain pending in this case. Reconsideration of the present case is earnestly requested in light of the following remarks.

### **Claim Objections**

The Examiner objected to old claims 1-108. More specifically, the Examiner stated:

It is uncertain to the Examiner what is separates the meets and bounds between the “programmable hardware element” and “reconfigurable circuitry”. Examiner requests Applicants’ help in determining the difference as the specification does not provide an appropriate definition between these limitations...Applicant’s arguments would be persuasive if the programmable hardware element was an FPGA, and if the reconfigurable circuitry were front end reconfigurable transceivers, and such transceivers were configured using the hardware architecture file. [Sic]

Applicant respectfully submits that new claims 109-208 recite limitations addressing the objections brought forth by the Examiner. For example, new claims 109-206 no longer recite “reconfigurable circuitry”; more specifically, new claims 109-155 and 189-208 replace “reconfigurable circuitry” with “one or more programmable transceivers”; new claims 156-166 replace “reconfigurable circuitry” with “programmable switching circuitry”; new claims 167-177 replace “reconfigurable circuitry” with “one or more programmable A/D and/or D/A converters”; and new claims 178-188 replace “reconfigurable circuitry” with “one or more field programmable analog arrays (FPAAs)”.

### **Section 103 Rejections**

Claims 1-108 were rejected under 35 U.S.C. § 103(a) as being unpatentable over A software development system for FPGA-based data acquisition systems by Wenban et al (“Wenban”) in view of Software advances in measurement and instrumentation by Fountain (“Fountain”).

With regard to the Section 103 rejection, Applicant notes that the Examiner's reasons for the 103 rejection hinge upon the Examiner's objection which is addressed above. Correspondingly, Applicant respectfully submits that Wenban in view of Fountain nowhere teaches or suggests the one or more programmable transceivers, the programmable switching circuitry, the programmable A/D and D/A converters, or the one or more FPAA's recited in claims 109-208. More specifically Wenban in view of Fountain fails to teach all the features and limitations of independent claims 109, 129, 130, 152, 154, 156, 162, 167, 173, 178, 184, 189-193, and 200.

Additionally, the Examiner admits that "Wenban does not expressly teach that the computer program is written as a block diagram" as recited in the independent claims, but asserts that "it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to combine the graphical programming of Fountain with the development environment of Wenban", suggesting the motivation: "to create a familiar technique and to enable rapid building, testing and modifying on Fountain on page 8".

Applicant reminds the Examiner, as held by the U.S. Court of Appeals for the Federal Circuit in *Ecolchem Inc. v. Southern California Edison Co.*, an obviousness claim that lacks evidence of a suggestion or motivation for one of skill in the art to combine prior art references to produce the claimed invention is defective as hindsight analysis.

In addition, the showing of a suggestion, teaching, or motivation to combine prior teachings "must be clear and particular . . . . Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence'." *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). The art must fairly teach or suggest to one to make the specific combination as claimed. **That one achieves an improved result by making such a combination is no more than hindsight without an initial suggestion to make the combination.**

Applicant respectfully submits that the Examiner's suggested motivation to combine: "to create a familiar technique and to enable rapid building, testing and

modifying”, simply describes utility of the National Instruments LabVIEW environment. In other words, the Examiner’s suggested motivation is simply a statement of perceived benefit of graphical programming in general, and nowhere suggests the combination of Wenban and Foutain. More specifically, Applicant submits that neither reference teaches or suggests to one of ordinary skill in the art to make *the specific combination as claimed*. Thus, for at least the reasons provided above, the motivation is **improper**.

Furthermore, Applicant notes that the Examiner has failed to provide any response to the arguments presented above.

Thus, for at least the reasons provided above, Applicant submits that Wenban in view of Fountain, taken singly or in combination, fails to teach all the features and limitations of new claims 109, 129, 130, 152, 154, 156, 162, 167, 173, 178, 184, 189-193, and 200, and so Applicant submits that claims 109, 129, 130, 152, 154, 156, 162, 167, 173, 178, 184, 189-193, and 200, and those claims dependent therefrom, are patentably distinct and non-obvious over the cited art, and are thus allowable.

Applicant also submits that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the rejection has been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time.

## CONCLUSION

In light of the foregoing amendments and remarks, Applicant submits the application is now in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-22503/JCH.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☒ Request for Continue Examination

Respectfully submitted,



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